

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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TY:

Legend

Taxpayer =

FC =

Parent FC =

Year 1 =

Year 2 =

Year 3 =

Firm Q =

Firm R =

Dear :

This is in response to letters dated October 17, 2008, and May 6, 2009, and subsequent correspondence submitted by Taxpayer’s authorized representative, that requested the consent of the Commissioner of the Internal Revenue Service (“Commissioner”) for Taxpayer to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code ("Code") and Treas. Reg. §1.1295-3(f) with respect to Taxpayer’s investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Taxpayer by his authorized representative, and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Taxpayer is a former U.S. citizen who owns an interest in Parent FC, which is the 100% owner of FC. FC and Parent FC are both foreign corporations constituting PFICs within the meaning of section 1297. Taxpayer was a U.S. citizen in Year 1 when FC was formed. FC continued to qualify as a PFIC through its Year 3 tax year, when Taxpayer ceased to be a U.S. citizen.

For Year 1 through Year 2, Taxpayer engaged Firm Q for preparation of his individual U.S. tax return. Firm Q employs experienced tax professionals to provide tax advice on a wide variety of tax matters, including international tax. Firm Q advised Taxpayer with regard to U.S. federal income tax matters, including Taxpayer's ownership of FC. Taxpayer relied on Firm Q to provide advice with respect to filing and reporting requirements in general, as well as any elections or statements that would be necessary to elect specific tax treatment.

In Year 2, Parent FC engaged Firm R to provide tax services in connection with the U.S. tax implication of various related investments. In the course of this evaluation, Firm R determined that FC might qualify as a PFIC under section 1297 beginning in Year 1 with respect to Taxpayer. Based on Firm R's determination regarding the potential PFIC status of FC and Parent FC, Taxpayer requested Firm R to submit a private letter ruling request to make a retroactive QEF election with respect to FC under Treas. Reg. §1.1295-3(f), retroactive to Year 1, and effective for all subsequent years.

Taxpayer has submitted an affidavit, under penalties of perjury, describing the events that led to his failure to make the QEF election by the election due date, including the roles of Firm Q and Firm R. Taxpayer represents that he provided information regarding the ownership and financial data of FC to Firm Q. Taxpayer represents that, in the relevant years: (1) FC was not identified as a PFIC; and (2) Taxpayer did not receive any advice regarding the availability of a QEF election with respect to FC.

Taxpayer has paid an amount sufficient to eliminate any prejudice to the United States government as a consequence of his inability to file amended returns, in accordance with a signed closing agreement between Taxpayer and the Commissioner. Further, Taxpayer has agreed to file an amended return for each of his subsequent taxable years affected by the retroactive election, if any.

Taxpayer represents that, as of the date of this request for ruling, the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a retroactive QEF election with respect to FC under Treas. Reg. §1.1295-3(f), retroactive to Year 1.

LAW

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a taxpayer if (1) an election by the taxpayer under section 1295(b) applies to such PFIC for the taxable year; and (2) the PFIC complies with such requirements as the Secretary may prescribe for purposes of determining the ordinary earnings and net capital gains of such company.

Under section 1295(b)(2), a QEF election may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for such taxable year. To the extent provided in regulations, such an election may be made after such due date if the taxpayer failed to make an election by the due date because the taxpayer reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. §1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the corporation for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. §1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. §1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of such failure;

3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on such professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made with Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Taxpayer to make a retroactive QEF election with respect to FC for Year 1, provided that Taxpayer complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election. We have, accordingly, approved a closing agreement with the Taxpayer with respect to those issues affecting his tax liability on the basis set forth above. Pursuant to our practice with respect to such agreements, the agreement contains a stipulation to the effect that any change or modification of applicable statutes enacted subsequent to the date of this agreement and made applicable to the taxable period involved will render the agreement ineffective to the extent that it is dependent upon such statutes.

Except as specifically set forth above, no opinion is expressed or implied concerning the U.S. federal tax consequences of the facts described above under any other provision of the Code.

This private letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Barbara E. Rasch
Senior Technical Reviewer, Branch 2
(International)